

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Apps, et al.

GROUP ART UNIT: 3636

SERIAL NO.: 09/439,427

EXAMINER: Jose' Chen

FILING DATE: November 15, 1999

FOR: Plastic Pallet

DOCKET NO.: RPC 0491 PUS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

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**RESUBMISSION OF AMENDMENT**

Please enter the Amendment attached hereto at Exhibit B. This Amendment was previously submitted on January 21, 2003 but apparently lost from the Patent Office file.

Approximately two months after the Amendment was submitted, the Patent Office file was declared lost (see attached printout from PAIR, Exhibit A). A reconstruction was begun in October 2003, but ended in January 2004, when the file was apparently found. However, in the interim, the attached Amendment apparently never found its way into the Patent Office file. The Autoreply attached with the Amendment (Exhibit B) shows that the Amendment was timely received by the Patent Office.

If any fees are due, please charge all fees to Deposit Account No. 50-1984.

Respectfully submitted,

Dated: January 3, 2005



Konstantine J. Diamond  
Registration No. 39,657  
4010 East 26<sup>th</sup> Street  
Los Angeles, California 90023  
Telephone: (323) 262-5145  
Facsimile: (323) 269-8506

**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this Resubmission of Amendment, and all documents referred to herein, (16 pages total) is being transmitted via facsimile to (703) 872-9306 on January 3, 2005.



Konstantine J. Diamond

Printer Friendly

09/439,427 PLASTIC PALLET

## Transaction History

Date	Contents Description
01-15-2004	Merged Reconstructed File into Found File.
01-15-2004	Duplicate case has been deactivated
10-08-2003	Mail Reconstruction Notice - Pending Application
10-08-2003	Reconstruction Notice under 37 CFR 1.251 - Pending Application
10-08-2003	Reconstruction of File - Begin
07-17-2003	Change in Power of Attorney (May Include Associate POA)
07-17-2003	Correspondence Address Change
03-26-2003	File Marked Lost
02-27-2003	Information Disclosure Statement (IDS) Filed
11-21-2002	Mail BPAI Decision on Appeal - Affirmed
11-21-2002	BPAI Decision - Examiner Affirmed
05-23-2002	Assignment of Appeal Number
03-26-2002	Case Docketed to Examiner in GAU
03-26-2002	Case Docketed to Examiner in GAU
03-13-2002	Mail Reply Brief Noted by Examiner
03-13-2002	Reply Brief Noted by Examiner
01-15-2002	Date Forwarded to Examiner
01-07-2002	Reply Brief Filed
04-10-2000	Case Docketed to Examiner in GAU
08-22-2001	Mail Examiner's Answer
08-22-2001	Examiner's Answer to Appeal Brief
06-14-2001	Case Docketed to Examiner in GAU
06-13-2001	Date Forwarded to Examiner
06-01-2001	Appeal Brief Filed
03-26-2001	Notice of Appeal Filed
03-26-2001	Request for Extension of Time - Granted
11-21-2000	Mail Final Rejection (PTOL - 326)
11-21-2000	Final Rejection
09-29-2000	Date Forwarded to Examiner
09-18-2000	Response after Non-Final Action
09-18-2000	Request for Extension of Time - Granted
04-12-2000	Mail Non-Final Rejection
04-10-2000	Non-Final Rejection

Exhibit A

03-20-2000	Information Disclosure Statement (IDS) Filed
03-29-2000	Case Docketed to Examiner in GAU
03-09-2000	Information Disclosure Statement (IDS) Filed
03-09-2000	Preliminary Amendment
11-15-1999	Preliminary Amendment
03-24-2000	Case Docketed to Examiner in GAU
12-16-1999	Application Dispatched from OIPE
12-07-1999	IFW Scan & PACR Auto Security Review
11-19-1999	Initial Exam Team nn

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01/21/03 16:27:35

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3232698506 RightFAX

Page 001

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Jan-11-03	07:12pm	From-REHRIG PACIFIC CO LA	323 269 8506	F-110	P.004	F-387
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**RE - SEND**

**Konstantine J. Diamond, Esq.**  
4010 East 26th Street  
Los Angeles, California 90023  
TELEFAX TRANSMITTAL  
Fax No: 323-269-8506, Phone No: 323-262-5145

TO: Examiner James Wilkerson      FROM: Konstantine J. Diamond  
COMPANY: U.S. Patent Office      FAX NUMBER: (703)872-9327  
DATE: January 21, 2003      NUMBER OF PAGES (including cover): 11  
MESSAGE

Re: Serial No. 09/439,477

URGENT:

Please find the following documents:

1. Amendment and Submission of Evidence in Response to New Ground of Rejection by Board Under 37 CFR 1.196 (b).
2. Declaration Under 37 CFR § 1.132.

Thank you.  
  
Konstantine Diamond

Received from: 3232698506 at 07/01/03 4:23:40 PM [Eastern Standard Time]

## Exhibit B

Jan-03-05 07:21pm  
01/21/03 16:22:41

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USPTO-->

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T-646 P.005/016 F-387  
Page 001

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Jan-21-03 02:16pm From-REHRIG PACIFIC CO LA

323 269 8506

T-114 P.001 F-110

**Konstantine J. Diamond, Esq.**

4010 East 25th Street

Los Angeles, California 90023

**TELEFAX TRANSMITTAL**

Fax No: 323-269-8506, Phone No: 323-262-5145

TO: Examiner Janet Wilkins

FROM: Konstantine J. Diamond

COMPANY: U. S. Patent Office

FAX NUMBER: (703)871-9327

DATE: January 21, 2003

NUMBER OF PAGES (including cover): 11

\*\*\*\*\* MESSAGE \*\*\*\*\*

Re: Serial No. 09/439,427

Examiner:

Please find the following documents:

1. Amendment and Submission of Evidence in Response to New Ground of Rejection by Board Under 37 CFR 1.196 (b).
2. Declaration Under 37 CFR § 1.132.

Thank you,

  
Konstantine J. Diamond

Received from 3232698506 at 1/21/03 4:16:45 PM [Eastern Standard Time]

RE - SEND

***Konstantine J. Diamond, Esq.***

4010 East 26th Street

Los Angeles, California 90023

TELEFAX TRANSMITTAL

Fax No: 323-269-8506, Phone No: 323-262-5145

TO: Examiner Janet Wilkens

FROM: Konstantine J. Diamond

COMPANY: U.S. Patent Office

FAX NUMBER: (703)872-9327

DATE: January 21, 2003

NUMBER OF PAGES (including cover): 11

\*\*\*\*\*MESSAGE\*\*\*\*\*

Re: Serial No. 09/439,427

Examiner:

Please find the following documents:

1. Amendment and Submission of Evidence in Response to New Ground of Rejection by Board Under 37 CFR 1.196 (b).
2. Declaration Under 37 CFR § 1.132.

Thank you,



Konstantine Diamond

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: William P. Apps, et al.

GROUP ART UNIT: 3636

APPEAL NO 2002-1675

SERIAL NO.: 09/439,427

EXAMINER: Wilkens, J.

FILING DATE: 11/15/1999

FOR: Plastic Pallet

DOCKET NO.: RPC 0491 PUS

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JAN 03 2005

Assistant Commissioner of Patents  
Washington, D.C. 20231

**AMENDMENT AND SUBMISSION OF EVIDENCE IN RESPONSE TO NEW  
GROUND OF REJECTION BY BOARD UNDER 37 CFR 1.196(b)**

Dear Sir:

In response to the decision of the Board mailed November 21, 2002, in which the Board explicitly stated a new ground of rejection, please amend the application as follows:


**IN THE CLAIMS**

Please add the following new claims 39-51:

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**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this DECLARATION UNDER 37 CFR § 1.132 is being sent via facsimile to Group Art Unit 3636, Examiner Janet Wilkens, Facsimile Number 703-872-9327 on January 21, 2003.

  
Konstantine J. Diamond

SN: 09/439,427

RPC 0491 PUS

39. (NEW) A pallet having at least one deck member, the pallet prepared by a method comprising:

molding a single material to form the at least one deck member having a first major surface of the single material and a second surface; and

mechanically scuffing the first major surface of the deck member to define a slip-resistant surface thereon.

40. (NEW) The pallet of claim 39, wherein scuffing includes scuffing the first major surface to create a multi-directional scuffing pattern.

41. (NEW) The pallet of claim 40, wherein scuffing includes brushing the first major surface with at least one wire brush.

42. (NEW) The pallet of claim 39 wherein the first major surface is a major surface of the pallet.

43. (NEW) The pallet of claim 39 wherein the pallet has a load-contacting surface and wherein the first major surface comprises the entire load-contacting surface of the pallet.

44. (NEW) A synthetic resin pallet, for use with a fork lift, having upper and lower decks spaced apart by a plurality of supports to define therebetween fork-receiving regions beneath the upper deck, the pallet made by a method comprising:

(a) separately injection-molding the upper and lower decks of synthetic resin to form a top surface of the upper deck, a bottom surface of the lower deck, and an underside of the upper deck in the fork-receiving regions;

(b) mechanically scuffing at least one of the top surface of the upper deck, the bottom surface of the lower deck, and the underside of the upper deck in the fork-receiving regions to create a slip-resistant scuffed texture; and

(c) assembling the decks to form a finished pallet.



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45. (NEW) The pallet according to claim 44 wherein said step (c) is performed after said step (b).

46. (NEW) The pallet according to claim 44 wherein said step (b) comprises scuffing the top surface of the upper deck, the bottom surface of the lower deck and the underside of the upper deck in the fork-receiving regions to create multi-directional scuffing patterns.

47. (NEW) The pallet according to claim 46 wherein scuffing comprises brushing said surfaces with at least one wire brush.

48. (NEW) The pallet according to claim 47 wherein scuffing includes brushing said surfaces with at least one rotating cup-shaped wire brush.

49. (NEW) The pallet of claim 44 wherein the top surface of the upper deck is a major surface of the pallet and wherein said step (b) includes the step of mechanically scuffing the top surface of the upper deck.

50. (NEW) The pallet of claim 44 wherein the pallet has a load-contacting surface and wherein the top surface of the upper deck comprises the entire load-contacting surface of the pallet and wherein said step (b) includes the step of mechanically scuffing the top surface of the upper deck.

51. (NEW) The pallet of claim 44 wherein said step (a) further includes the step of injection-molding one of the upper and lower decks to include a plurality of supports and the other of the upper and lower decks to include a plurality of recesses for receiving the plurality of supports and wherein said step (b) includes the step of mechanically scuffing the top surface of the upper deck.

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**REMARKS**

The Board's Decision on Appeal mailed November 21, 2002 explicitly states that it contains a new ground of rejection pursuant to 37 CFR § 1.196(b). Pursuant to 37 CFR 1.196(b)(1), Applicant hereby submits an appropriate amendment of the claims (namely, the addition of claims 39-51) and a showing of facts relating to the new ground of rejection. The showing of facts contained herein and in the attached Declaration supports the patentability of the appealed claims 22-38, to which the Board applied the new ground of rejection, and of the newly submitted claims 39-51.

Applicant also submits an argument below in support of the new claims 39-51. This is an appropriate amendment, because these new claims contain limitations not found in the original claims. These new limitations are added to address the Board's new ground of rejection. The arguments below in support of these new claims do not apply to the appealed claims to which the Board applied the new ground of rejection. Thus, this amendment is appropriate and the arguments below do not constitute a request for re-hearing.

**Argument with Respect to New Claims 39-51**

The Board's new rejection of claim 36 as anticipated by Wyler (U.S. Patent No. 5,868,080) stated that claim 36 was not restricted to mechanically scuffing either the entire upper or lower surface of the deck member. The Board also found that the exposed surface of the reinforcing bar is part of the deck surface and that therefore, if the exposed surface of the reinforcing bar of Wyler were mechanically scuffed (or indistinguishable from a mechanically scuffed surface), all of the limitations of claim 36 would be met.

New claim 39 specifies the step of "molding a single material to form the at least one deck member having a first major surface of single material...". Since the surface of the deck member in Wyler as defined by the Board is partially polyethylene (the deck 14) and partially a fiberglass reinforced plastic (reinforcing bars 32), the deck member of Wyler does not have a first major surface of the single material formed by molding as required by new claim 39. Therefore, new claim 39 is allowable.

New claim 44 specifies the step of "separately injection-molding the upper and lower decks of synthetic resin to form a top surface of the upper deck...". Again, in the

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Board's decision, the Board defined the upper surface of the reinforcement bar together with the upper surface of the deck 14 to meet the "top surface of the upper deck" language. With the additional clarification in claim 44, the top surface of the upper deck must be formed by injection molding the upper deck of synthetic resin, whereas the top surface previously defined by the Board in Wyler is formed by injection molding the deck 14, forming the reinforcing bars by a pultrusion process and sliding the reinforcing bars into channels in the deck 14. Thus, the "top surface" previously defined by the Board in Wyler is now even more clearly outside the scope of claim 44.

Claims 43 and 50 specify that the pallet has a load-contacting surface and that the top surface of the upper deck comprises the entire load-contacting surface of the pallet.

**Evidence in Support of Patentability of Claims 22-38**

The Board's decision indicated that Applicant could come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. (Board Decision, footnote 1) The Declaration of William P. Apps, attached as Exhibit A, is evidence establishing a non-obvious difference between the claimed product and the product disclosed in Wyler. As the Declaration establishes, Wyler's recitation of "an integral anti-skid surface 36, formed e.g. by knurling or roughening..." (column 4, lines 17-18) is different from a claimed product resulting from the process of "mechanically scuffing," creating a "multi-directional scuffing pattern," and "brushing...with at least one wire brush."

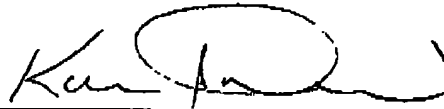
This is also a difference that would not be obvious, as was discussed in the previous appeal. Applicant's previous Appeal Brief and Reply Brief are hereby incorporated by reference for that argument.

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Please charge Deposit Account No. 50-1984 in the amount of \$402 for two additional independent claims and thirteen additional claims total. If any other fees are due, please charge such fees to Deposit Account No. 50-1984.

Respectfully submitted,



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Dated: January 21, 2003

SN: 09/439,427

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT: William P. Apps, et al.

GROUP ART UNIT: 3636

APPEAL NO: 2002-1675

SERIAL NO.: 09/439,427

EXAMINER: Wilkens, J.

FILING DATE: 11/15/1999

FOR: Plastic Pallet

DOCKET NO.: RPC 0491 PUS

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Assistant Commissioner of Patents  
Washington, D.C. 20231

**DECLARATION UNDER 37 CFR § 1.132**

I, William P. Apps, state as follows:

1) I am one of the named inventors in the above-referenced patent application. I have a bachelor's degree in mechanical engineering and approximately 20 years of experience in the design and manufacture of plastic products for the material handling industry, including plastic pallets. I am one of skill in the art of designing plastic pallets such as those in the present application and I am generally familiar with those of ordinary skill in the art.

**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this DECLARATION UNDER 37 CFR § 1.132 is being sent via facsimile to Group Art Unit 3636, Examiner Janet Wilkens, facsimile number 703-872-9327 on January 21, 2003.

  
Konstantine J. Diamond

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2) In our above-referenced patent application, we describe our process of "mechanically scuffing" the deck surface of the pallet. After injection-molding, the outermost layer of the polymer initially tends to be slippery, as ascertained by its generally "shiny" appearance. The mechanical scuffing process that we claim is a surface operation which removes the shine and slipperiness from the outermost surface of the polymer deck surface. Because it is only a surface operation, no protrusions or bumps are formed on the mechanically scuffed surface, yet the mechanically scuffed surface is less slippery. The mechanically scuffed surface is identifiable by its smooth, yet dull surface and the scuff marks, which are visible on the deck surface.

3) We prefer a multi-directional scuffing pattern on the deck surface in our invention. The multi-directional scuffing pattern provides anti-skid properties in each direction on the deck surface. The multi-directional scuffing pattern is visible on the surface of the deck.

4) We prefer to use a wire brush to scuff the deck surface, which provides visible scuff marks from the wires of the brush. In particular, we use a rotating cup-shaped wire brush, which provides relatively uniform, multi-directional scuffing patterns on the deck surface.

5) I have reviewed U.S. Patent No. 5,868,080 to Wyler et al. Wyler describes a pallet body 12 comprising a "unitary structure molded from...high density polyethylene." Reinforcing bars 32 are inserted into channels in the pallet body for reinforcement. The reinforcing bars in Wyler are described as made of fiberglass reinforced plastic fabricated from a pultrusion process. Wyler describes that an exposed surface 34 of each reinforcing bar preferably comprises "an integral anti-skid surface 36, formed e.g. by knurling or roughening."

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6) One of skill in the art would know that it is generally considered undesirable to expose the fibers of a fiberglass composite structure made in a pultrusion process. It is generally known in the art that the fiberglass composite structure should not be subject to removing material or "mechanically scuffing" the surface. This would be particularly true of a "reinforcing bar" whose purpose is to provide strength and rigidity to a load-bearing surface of the pallet. Therefore, one of skill in the art would not interpret the "knurling" or "roughening" comment in the Wyler patent to include mechanical scuffing or scuffing with a wire brush, or any other sort of process that would expose or damage the fiberglass fibers by removing even the outermost layer of polymer.

7) One of ordinary skill in the art would generally interpret "knurling" process to mean that the surface is provided with a series of small ridges or protrusions, either by molding in the protrusions or by removing material to form the protrusions or ridges. However, since Wyler's reinforcing bars are a fiberglass composite made in a pultrusion process, one of skill in the art would understand the "knurling" comment to mean the ridges or protrusions are molded into the surface. For the reasons stated above, those in the art would know not to remove material from the fiberglass composite structure. However, either form of "knurling" (removing material or molding) is very different from the claimed process of "mechanically scuffing" which is a surface operation that removes the shine and slipperiness from the outermost surface of the polymer and does not form ridges or protrusions. Therefore, a molded polymer surface that has been "mechanically scuffed" is readily visibly and tactilely distinguishable from a molded polymer that has been knurled.

8) Wyler also mentions "roughening" the surface of the reinforcing bars. The description of Wyler is certainly insufficient to lead anyone of ordinary skill in the art to mechanically scuffing the surface or mechanically scuffing the surface with a wire brush. Since "roughening" is mentioned along with "knurling," one might understand the "roughening" to be protrusions or ridges that are molded into the surface. Again, those of skill would know not to remove material, even the outermost surface, from a fiberglass composite structure. Therefore, one of skill would again assume that the "roughening"

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process was molding ridges or protrusions into the surface of the reinforcing bars. The ridges or protrusions molded onto the surface would be visibly different and tactilely different from a mechanically scuffed polymer surface.

9) I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001 and such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 1/21/03Signed: William P. Apps  
William P. Apps